

1 IN THE UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 MINERVA MARTINEZ, ET AL.,)
5)
6 Plaintiffs,)
7)
8 v.) Case No. 3:22-cv-00354
9) JUDGE RICHARDSON
10)
11 NISSAN NORTH AMERICA, INC.,)
12)
13 Defendant.)
14)
15)

16 BEFORE THE HONORABLE ELI J. RICHARDSON, DISTRICT JUDGE

17 TRANSCRIPT OF PROCEEDINGS
18 FAIRNESS HEARING

19 March 20, 2023

20

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2 The above-styled cause came on to be heard at
3 1:02 p.m. on March 20, 2023, before the Honorable Eli J.
4 Richardson, District Judge, when the following proceedings
5 were had, to-wit:

6

7 **THE COURT:** All right. We are here this afternoon
8 in the matter of *Minerva Martinez, et al, vs. Nissan North*
9 *America, Inc.* And we're here for a hearing on the motions
10 that were filed in this case at Docket Nos. 48 and 50.

11 Typically this kind of thing is called a fairness
12 hearing. It is a hearing on the motion for a settlement for
13 final -- what's described at docket -- it's really a motion
14 for this Court to approve a settlement class action, motion
15 for award of attorneys' fees. Those are at Dockets Nos. 48
16 and 50 respectively.

17 All right. May have to raise my voice with this
18 microphone. It may be malfunctioning a little bit.

19 Got a few different things to talk about here
20 today, not least of which are the later filings that we had
21 in this case the end of last week, beginning of this week.

22 If counsel could make their appearances, please.

23 **MR. PADGETT:** Good afternoon, Your Honor. Cody
24 Padgett from Capstone Law for plaintiffs in the class. With
25 me are Melissa Weiner, Natalie Finkelman Bennett, and Larry

1 Deutsch.

2 **THE COURT:** All right. Good afternoon, counsel.

3 **MR. HICKS:** Good afternoon, Your Honor. John
4 Hicks on behalf of Nissan North America. Paul Cauley is
5 going to speak primarily for the defendants, so with me is
6 Brad Andreozzi, and from Nissan, Blind Akrawi.

7 **THE COURT:** All right. Thank you very much,
8 Mr. Hicks. Good afternoon to folks on that side of the room
9 as well.

10 All right. The first thing that it seems to me
11 that I should do, let's just recount a little bit of the
12 procedural history. Last August, the Court had issued an
13 order preliminarily approving class action settlement,
14 appointing class counsel, and also directing and approving of
15 specific notice procedures.

16 As the date for the fairness hearing set by the
17 Court approached, counsel did file their motion for final
18 approval of the class action settlement at Docket No. 48,
19 also the memorandum in support of Docket No. 49, and also a
20 variety of declarations in support of those motions.

21 And then there were also filings related to
22 several objections that had been filed. Each side filed what
23 they had styled -- I want to say maybe it was styled as
24 responses in support of the final approval, really serving to
25 sort of challenge the objections that had been made to the

1 class action settlement.

2 The Court has reviewed these filings, is familiar
3 with the final record as a whole. And it does note that
4 there are very recent filings. And, in particular, at
5 Docket No. 80, there were objections filed to the final
6 approval of the class action settlement.

7 And the notion behind those objections filed at
8 Docket No. 80 was there were particular class members who
9 were not really objecting to the fairness adequacy or
10 reasonableness of the settlement but, rather, were saying
11 that there should be several things done by the Court sort of
12 as a condition for the approval of the settlement. In
13 particular, there should be the ability to opt out late after
14 the, I think it was, February 13th deadline, that there
15 should be a class notice sent out again and, this time, sent
16 out in Spanish as well, and then that -- also that there was
17 basically a request for opt-outs to be accepted late in
18 particular with respect to, but not exclusively, with respect
19 to individuals that had already had lawsuits filed against
20 the defendant in this case.

21 And the basis for these objections -- that's the
22 term used -- and the request for relief was the notion that
23 ultimately, class notice was not sufficient in a couple of
24 respects, in particular that it was not sent out -- the class
25 notice that was mailed out was not sent out in Spanish even

1 though the long form notice on the settlement website was in
2 Spanish.

3 And then there was also criticism of the notice in
4 that it did not specifically say that, well, if you have a
5 lawsuit pending, then unless you opt out, you can no longer
6 proceed with that lawsuit because the settlement will
7 determine your rights to the exclusion of your own personal
8 action.

9 So that's how the Court construed those
10 objections. And there was filed at Docket No. 82 a variety
11 of documents in support of that request including really a
12 request to be excluded filed by a large number of folks who
13 were primarily Spanish speakers.

14 Then just this morning, at Docket No. 83,
15 defendant had filed a sort of a response to those objections
16 noting that essentially in return for sort of withdrawal of
17 the objections at Docket No. 80, that the parties would not
18 oppose an opt-out. And as I gather, I want to hear more
19 about this opt-out of folks that did not meet the deadline,
20 and allowing them to opt out later for excusable neglect and
21 perhaps maybe setting forth the idea maybe -- and I want to
22 hear from the parties about this -- that, you know, folks
23 that are allowed to opt out late, there may be particular
24 procedures or conditions to allowing the late opt-out.

25 And then at Docket No. 84 the objecting counsel

1 withdrew its objections of the two filing objectors, who were
2 Guadalupe Martines Solano and Filomeno Estanislao Vargas.
3 And what is stated regarding the withdrawal is that class
4 counsel and NNA, which is the defendant, have agreed, based
5 on the declarations submitted by Solano and Vargas and in the
6 particular circumstances of their request that Solano and
7 Vargas should be permitted a late request to opt out or be
8 excluded from the settlement class for excusable neglect.

9 Then they say that they hereby withdraw their
10 objections to the final approval of class action settlement.
11 And they also note that neither Solano nor Vargas nor any
12 other class member represented by their counsel has been
13 offered or will receive any payment for the withdrawal of the
14 objections.

15 So probably summarized that as best I know how in
16 a short period of time.

17 So it seems to me what we need to do sort of first
18 is nail down, for the Court's understanding, the impact of
19 this withdrawal pursuant to an agreement between these
20 objectors and their counsel, on the one hand, and the parties
21 to this settlement on the other hand.

22 What the effect is -- and I suspect that there may
23 be something about the effect of this that would need to be
24 accounted for in the final approval order, which I note was
25 submitted in proposed form at Docket No. 22-2. I don't know

1 if I've seen any other version of that, but we did have a
2 proposed final settlement order at Docket No. 22-2.

3 All right. So who wants to tell me about the
4 resolution of these objections? Mr. Padgett, Mr. Cauley?

5 **MR. CAULEY:** I think it would probably be best
6 that I address it, Your Honor.

7 **THE COURT:** Yes, sir.

8 **MR. CAULEY:** Would you like for me to do it from
9 here or from the podium?

10 **THE COURT:** Let's say the podium. Thank you.

11 **MR. CAULEY:** Your Honor, I would say that there
12 are -- we've got probably divided the group that filed late
13 opt-outs into, I would say, four groups. Okay?

14 **THE COURT:** Uh-huh.

15 **MR. CAULEY:** We have Ms. Vargas and Ms. Solano
16 that you've already addressed. We've already covered the
17 withdrawal of their objection, and both class counsel and NNA
18 have agreed that they should be considered opt-outs.

19 In addition to that, I'm going to call Group 2, I
20 think I would describe those as the group that have filed
21 late opt-out requests and had filed lawsuits by February 13
22 of 2023 which was the opt-out deadline.

23 For people that fit in that category -- and we've
24 got an agreement as to who those would be -- those should be
25 deemed to be opt-outs as well. We have worked with the

1 settlement administrator. Typically, the -- assuming the
2 Court decides to finally approve the settlement, we typically
3 will attach an Exhibit A, which is all of the approved
4 opt-outs. We have already worked -- class counsel and I have
5 already worked with the settlement administrator today to get
6 an updated Exhibit A that would include Ms. Vargas, would
7 include Ms. Solano, and would also include anyone that has
8 filed a late opt-out request, but it's been filed as of
9 today, and had a pending lawsuit on February the 13th of
10 2023.

11 And so we've already got an Exhibit A prepared and
12 reviewed by the settlement administrator that would have all
13 of those people in the opt-out list.

14 **THE COURT:** The second category, about how many
15 folks are we talking?

16 **MR. CAULEY:** Well, we've got, I think, 55 names.
17 Now, that's not 55 vehicles because there are some vehicles
18 that are owned -- both people that own the vehicle submitted
19 a separate opt-out request. But it would be a total of 55
20 new names added to the opt-out list that was included with
21 the settlement administrator's third supplemental
22 declaration. We've got to add 55 names to that list which
23 we've already got and are prepared to submit to the Court
24 later today.

25 **THE COURT:** So the names, in some cases, you have

1 joint ownership, and that's why there might be more names
2 than vehicles?

3 **MR. CAULEY:** Correct.

4 **THE COURT:** There's a footnote in one of the
5 documents -- maybe it was the motion for final approval or
6 the brief in support of it -- though, noting that in some
7 cases, there might be one name associated with a large number
8 of vehicles as well, particularly like fleet owners. Is that
9 right?

10 **MR. CAULEY:** There could be, yes.

11 **THE COURT:** Okay. All right. So you have a third
12 category?

13 **MR. CAULEY:** All right. The third and fourth
14 categories will not be on the opt-out list, but as indicated
15 in the documents we filed, Nissan North America and counsel
16 for the other individuals on the SLP client list, we have
17 reached an agreement that would be outside of final approval,
18 so it would not affect final approval.

19 It's simply an agreement that if their clients,
20 before May 20 of 2023, submit to Nissan a declaration similar
21 in content, not exactly the same -- and we've laid out the
22 parameters for that in our agreement with each other -- but
23 if they submit a declaration similar in content to Ms. Vargas
24 and Ms. Solano indicating they really cannot understand
25 English and did not know that they had received a class

1 notice, if that is submitted to us, then we have indicated we
2 will agree to treat those people as opt-outs and not enforce
3 the release in the settlement agreement in exchange for them
4 giving up the benefits of the settlement agreement.

5 So they would not get the extended warranty, they
6 would not get the other relief in the class, but they would
7 be allowed to proceed with their lawsuit or -- whether filed
8 or not. So that would be -- I'm going to call that the
9 Spanish-speaking group for lack of a better shorthand for
10 Group 3.

11 Then Group 4 would be everybody else on the SLP
12 client list that did not fall within any of the first three
13 categories. We have stipulated that those individuals are
14 not waiving any right they would have to file a motion for --
15 with this Court for excusable neglect if they believe there
16 are circumstances post-final approval that would be -- that
17 would warrant them filing such a motion. And obviously, we
18 have agreed to meet and confer with SLP on those issues
19 before this Court would be troubled with any type of motion.

20 So that would -- that would -- that addresses
21 all -- I think those four groups would account for everyone,
22 and that's the agreement that we needed to tell you about so
23 you would understand that in conjunction with, you know, the
24 request for final approval, that was an agreement that we
25 have made with SLP on behalf of their clients.

1 **THE COURT:** Okay. All right. One moment.

2 All right. Now, is everyone implicated here an
3 SLP client?

4 **MR. CAULEY:** Yes. Everybody associated with the
5 motion that was filed on Thursday, those are all individuals
6 represented by strategic legal practices, SLP, based in
7 California, and their counsel is here in the audience.

8 **THE COURT:** Okay. All right. Very well. That
9 would include the 50 -- all 55 of the names in Category 2; is
10 that right?

11 **MR. CAULEY:** That is correct except for two. I
12 should have said -- that's 53 people. There were also two
13 objectors that I believe are Bennett and Cappello,
14 Ms. Bennett, Mr. Cappello. Those are objectors that really
15 intended to opt out and, after discussion with counsel, filed
16 declarations with the Court as part of, I think, the papers
17 that class counsel filed. So you add those two and the 53
18 that were represented by SLP, that's how you come up with the
19 55.

20 **THE COURT:** Okay. Gotcha. Okay. All right.
21 Because they -- you know, they were noted as filing after the
22 deadline. So 53 SLP clients in Category 2 plus Bennett and
23 Cappello who are not SLP clients, that gets you to 55.

24 **MR. CAULEY:** Right. We'll be adding 55 to the
25 opt-out list.

1 **THE COURT:** Okay. All right. So, Mr. Cauley,
2 when we look at the proposed final approval order, what would
3 be your suggestion about language to accommodate this? I
4 mean, because on -- like Category 1 and 2, maybe you don't
5 have to say anything, just include the total of 57 folks in
6 Exhibit A. You don't have to say anything; fair to say?

7 **MR. CAULEY:** I would agree.

8 **THE COURT:** What about the other two categories?
9 Anything needs to be said, or is this kind of handled outside
10 of the agreement -- I mean, the Court's final approval?

11 **MR. CAULEY:** I think this is handled outside of
12 the Court's final approval order. This is -- it is an
13 agreement, it is a separate agreement between Nissan North
14 America and SLP on behalf of their clients on what we will do
15 going forward and how their claims will be handled, but it
16 does not affect final approval, in my view. I think it's
17 outside of this.

18 They have withdrawn; Ms. Vargas and Ms. Solano
19 have withdrawn their objection. They're no longer asserting
20 those objections. Obviously we would address those
21 objections on the merits. To the extent you have questions
22 later, we're happy to do that. But in terms of your final
23 approval order, I think, based on the fact that everything is
24 documented in -- on the docket and you've got filings from
25 Ms. Solano and Ms. Vargas, you've got filings from us, you've

1 got our representation that we're working with class counsel
2 to get the Exhibit A of the opt-out list complete and updated
3 to be accurate, I don't think that the -- I don't think the
4 final approval order has to do anything special that it would
5 not otherwise do. I think it's outside the scope of this --
6 of the order here.

7 **THE COURT:** Okay. All right. Thank you very
8 much, Mr. Cauley. That should take care of that for now from
9 your side.

10 And, Mr. Padgett, anything that you would add to
11 what Mr. Cauley said or anything you disagree with?

12 **MR. PADGETT:** No, Your Honor. This -- I have
13 nothing to add with respect to those issues.

14 **THE COURT:** All right. Okay. Since we have
15 counsel for SLP in the gallery, either one of them want to be
16 heard?

17 **MR. CLABO:** No, Your Honor.

18 **THE COURT:** All right. Thank you. Okay. For the
19 record, maybe could you identify yourself, sir?

20 **MR. CLABO:** Yes, Your Honor. Jacob Clabo of the
21 Nashville Bar, and Mr. Shahian whose pro hac vice application
22 is currently pending from SLP is here as well.

23 **THE COURT:** Yes, sir. All right. Thank you. So
24 we'll nail down the spelling later.

25 The -- so I think I sort of understand the

1 resolution of those objections and, you know, the objections
2 were -- here's my view of the objections. They were late
3 but, you know, the filing kind of -- sort of explained why,
4 and I do sort of understand that.

5 In terms of the substance of the objection, the
6 objection is being withdrawn in any event, and I think that
7 means we don't really have a -- sort of a formal objection
8 anyway for the Court to rule upon.

9 You know, having said that, what I will say about
10 the arguments made about -- made in the objection, you know,
11 I think they raise issues that are relevant to the Court's
12 sort of determination which it needs to make about ultimately
13 the adequacy of notice provided. And I think that, you know,
14 what was in the substance of the objection doesn't show that
15 the notice provisions as ordered by the Court weren't
16 complied with. I think the objections do a better job of
17 sort of pointing out why notice may be far from ideal for
18 particular categories of folks, you know, persons that don't
19 have English as a primary language, people that have already
20 filed an action against the defendant here.

21 And, you know, I certainly get the point there, but I'm
22 also inclined to believe -- and this goes again to the
23 determination of adequacy of notice to the class. I
24 certainly am inclined to believe that, you know, sort of the
25 enhancements to notice, you know, additional specifics

1 translation into a particularly prominent non-English
2 language, those things may be ideal, but the absence of them
3 don't impair the adequacy of class notice in the final
4 analysis.

5 So that's kind of where the Court's viewing that, and
6 that's where the -- you know, and I think it's fair to say
7 that the response by the defendant to the objection, which
8 defendant filed as Docket No. 83, I think sets forth a basis
9 for the Court to find that notice was adequate,
10 notwithstanding the concerns expressed by the objectors who
11 made the filing at Docket No. 80.

12 Okay. I wanted to then note that, you know, I've read
13 the two pending motions and the documents in support. I
14 wanted to ask Mr. Padgett to make his remarks in support of
15 the proposed settlement.

16 **MR. PADGETT:** Thank you, Your Honor.

17 Just to start off, I want to note that I'm
18 prepared to talk about the fairness reasonable adequacy, the
19 factors with the exception of attorneys' fees. If Your Honor
20 has specific questions about that, Melissa Weiner is the
21 person to ask.

22 And then in terms of what you would like from me,
23 I'm prepared to make a record and run through my points here
24 on my outline. If you have any specific questions you'd like
25 to ask, I'm happy to do that as well.

1 **THE COURT:** All right. Very well. Yeah, why
2 don't you walk through the points that you've highlighted for
3 discussion in your outline and we'll go from there.

4 **MR. PADGETT:** Sure. So the issue before the
5 Court, as noted, is whether the settlement is fair,
6 reasonable, and adequate. It is. Every class member
7 automatically receives a two-year, 24,000 mile extended
8 warranty on the CVT and related components, no claims
9 procedure needed.

10 That, to us, is the primary benefit of this case.
11 It is a monumental benefit to the class. Our expert, Lee
12 Bowron, supported a report and a declaration valuing that
13 component at \$294 million. Past cases have noted the value
14 of extended warranties in this circuit and others, and we
15 think it's an outstanding result.

16 The release in this case was narrowly tailored.
17 It did not include any personal injury claims. It did not
18 include claims that do not relate to the component at issue
19 in this case, the CVT.

20 Notice in this case was exceptional, and the
21 response to notice was exceptional. We received 3,303
22 opt-outs, I believe. That's a minuscule percentage,
23 something like 0.07 percent. There were four objections
24 remaining after two folks declined to continue with their
25 objections because they really were trying to opt out and

1 just were misunderstanding the procedures.

2 The settlement was negotiated under the
3 supervision of an experienced mediator, Hunter Hughes. It
4 was negotiated at arm's length, and the principal terms were
5 resolved before discussion of attorneys' fees.

6 And the settlement provides similar, if not
7 superior, remedies to those they could have expected to
8 receive at trial, but without the delay and risks associated
9 with continued litigation.

10 I just want to see if there's anything further to
11 highlight unless Your Honor has any specific questions.

12 **THE COURT:** Well, one of the things is, you know,
13 without, you know, getting into confidential mediation stuff,
14 it would be fair to say that generally, generally, you know,
15 the compromise reached here would be sort of consistent with
16 Mr. Hughes' view or in line with -- in his view, would you
17 say that -- fair to say would have his support?

18 **MR. PADGETT:** Yes, that is fair to say, Your
19 Honor.

20 **THE COURT:** Fair to say, yeah. I don't want to
21 get any more detailed than that about it, but he is -- 30
22 years ago, I was an associate working for him. In those
23 days, his practice was exclusively employment defense, and I
24 suspect that's a fair amount of his -- probably still a fair
25 amount of his mediation.

1 But if I recall correctly, he's mediated a number
2 of these class actions in the past; is that right?

3 **MR. PADGETT:** That's correct, Your Honor.

4 **THE COURT:** Yeah. Okay.

5 When we look at the objections here, in broad
6 strokes, one of the points that I think plaintiff makes in
7 response to all of these is that the remedies to the
8 grievances expressed in the objections really is simply to
9 opt out and that the remedy for such particularized
10 grievances is, you know, not to tank the settlement, simply
11 for the aggrieved person to opt out and they think they can
12 have a better remedy then to do that. Would that be fair to
13 say?

14 **MR. PADGETT:** That is fair to say, Your Honor. We
15 take the objections seriously. We reached out to everybody
16 who filed an objection because a lot of the objections
17 weren't entirely clear as to what they wanted, what -- and
18 they didn't betray an understanding of what an objection
19 really means versus what an opt-out means. These folks are
20 new to class settlements.

21 And what we found was that most folks were either
22 just trying to opt out, or they had particular individual
23 issues that just can't be addressed in a settlement involving
24 over 2 million class members.

25 You know, one objector had an accident. It wasn't

1 clear from the objection that the accident was caused by CVT.
2 Another was asking for incidentals like gas money for a
3 friend who had to pick them up. And as you noted, you know,
4 if you're trying to get a recovery for things like that,
5 opting out may be the better way to do that.

6 **THE COURT:** And, yeah, because, you know, if your
7 position is that you should do better and you should do
8 better than what you would do in the settlement, the idea is
9 to opt out because the fact that you think you could do
10 better itself doesn't go very far towards showing that a
11 proposed settlement is not fair, reasonable, and adequate.
12 Would you agree with that?

13 **MR. PADGETT:** That's right, Your Honor. You know,
14 these folks, they -- one had a CVT failure at 107,000 miles
15 and they wanted to extend the mileage duration to 110 miles.
16 So a lot of folks, they do not litigate these cases, they do
17 not understand the risks and the benefits. And we submit
18 that the opinions of class counsel and defense counsel of the
19 mediator are just closer to the ground on what's realistic
20 and what's doable in a case like this.

21 **THE COURT:** The line has to be drawn somewhere,
22 right? Here, it's an extra 24,000 miles to two years. But
23 it does have to be drawn somewhere. And in your view,
24 drawing it where you did was both reasonable and, in fact,
25 impressive for the plaintiff class; is that right?

1 **MR. PADGETT:** That is correct, Your Honor.

2 **THE COURT:** Okay. All right. I did -- regarding
3 notice, there were -- there were just a couple of questions
4 that I had had. I thought maybe -- let's see here. Let me
5 ask you this: Regarding the third component of relief,
6 right, it's a voucher for \$1,000, is it your belief that
7 that's not an illusory benefit? And there was some briefing
8 on this. And the question, I want to ask your opinion about
9 them and I'm going to ask Mr. Cauley about this as well
10 though: It's -- is it your belief that it is not illusory in
11 the following sense, that, well, if the customer gets a
12 thousand-dollar voucher at the dealership, they're going to
13 find a way to bill that \$1,000 back into the price? You know
14 what I'm saying? Right? Is your belief that the benefit for
15 that voucher is not illusory in that particular way?

16 **MR. PADGETT:** No, that's not a concern of ours.

17 This voucher is as good as cash, can be presented at the end
18 of negotiations, so it's not going to get tacked into, you
19 know, the -- that's just not a concern of ours, no.

20 **THE COURT:** Okay. Good. All right. So fair to
21 say that, you know, look, regarding the motion for attorneys'
22 fees, the cap is 3.5 million. In an earlier sort of
23 declaration, there's about 21,000 in fees. And -- excuse
24 me -- in expenses and the rest was in fees. Those expenses
25 went up, so the attorneys' fees went down so as not to exceed

1 the cap of 3.5 million. But the idea is that the cap will be
2 reached, and attorneys' fees are going to be 3.5 million
3 minus the final figure for expenses; is that right?

4 **MR. PADGETT:** That's exactly right, yes.

5 **THE COURT:** Any more expenses than what I've seen
6 represented here that anyone is going to claim?

7 **MR. PADGETT:** No, our last -- I'm sorry.

8 **THE COURT:** I was going to say, do you think
9 that's final?

10 **MR. PADGETT:** Our last submission is final.

11 **THE COURT:** All right. Now, when I look at the
12 figures -- and this kind of goes to notice -- there are a
13 million -- basically 1,002,000 class vehicles. There were
14 2,003,000 roughly records of ownership because there can be
15 multiple owners of the same vehicle.

16 Then it says there were 1.482 roughly million
17 notices sent from those just over 2 million sets of records.

18 So you have fewer notices than you have owners.
19 The footnote here, though, sort of explains it, that one
20 notice covered a very large amount of vehicles for fleet
21 owners. Is that -- am I reading that correctly? I just want
22 to make sure we don't have a gap in notice.

23 **MR. PADGETT:** Sure. That factors into that
24 discrepancy. We also received updated numbers from the
25 claims administrator here, and, you know, if folks from the

1 defense table disagree, let me know. But what I have is that
2 notice was mailed to 1,954,169 class members at the end of
3 the day, and that they confirmed that notice reached
4 1,879,449 class members. So I know that the claims
5 administrator has procedures for getting address bounce-back
6 and correcting those, and through that process, they were
7 able to reach approximately 96 percent of the class.

8 **THE COURT:** Okay, 96 percent. All right. So
9 those are, you know -- I happen to be looking at, you know,
10 the filing and the memorandum January 12th of 2023. It
11 sounds like your figures are definitely updated, though, by
12 several hundred thousand. Does that sound right? I'm
13 looking at Footnote 3.

14 **MR. PADGETT:** That's correct, Your Honor.

15 **THE COURT:** Okay. All right. You're confident we
16 don't really have a gap, really, in notice; 96 percent of
17 class members were reached?

18 **MR. PADGETT:** That's correct. They were reached
19 by direct mail. There was also the settlement website. And
20 really, as we noted in the papers, direct mail notice is a
21 phenomenal way to reach people. It's great that we have the
22 DMV records in these cases to be able to do that. It's
23 somewhat unusual and it does give us confidence that notice
24 was particularly effective here.

25 **THE COURT:** Yeah. Yeah. Okay. All right. And,

1 you know, final thing is this, in broad strokes. You've
2 touched on this in your memorandum, but fair to say that
3 obtaining class certification, if contested, and prevailing
4 at trial with any appreciable recovery would have been very,
5 very difficult, difficult hill to climb necessarily even if
6 you have a good case? Would you agree with that?

7 **MR. PADGETT:** I think this is a great case but
8 having done automotive defect cases for over a decade, I can
9 tell you there are a lot of challenges. We've seen them, and
10 yes, reaching this kind of a relief through trial, there
11 would have been significant risks.

12 **THE COURT:** Yep. All right. Thank you very much,
13 Mr. Padgett.

14 And, Mr. Cauley, if you wouldn't mind stepping up
15 to the plate.

16 All right. Tell you what. I wanted -- I did want
17 to ask about a couple of things, and you had, I'm sure, heard
18 my question about whether the thousand-dollar voucher was
19 illusory. Dealership could find a way to offset it in how
20 they pitch the offer. You know, maybe this time they won't
21 offer invoice price, they'll offer something higher, those
22 sorts of things.

23 What can you tell me about whether that
24 thousand-dollar voucher would be essentially as good as cash
25 for someone that does choose to purchase a new vehicle?

1 **MR. CAULEY:** Well, I think Mr. Padgett was
2 correct. I think the understanding of the voucher is it
3 should be treated as cash. It is -- can be applied at the
4 end of the negotiated deal. This is a voucher that's handed
5 to the class member, not handed to the dealer. So the class
6 member goes into the dealer and negotiates whatever deal they
7 want to negotiate. When it comes time to pay, they have a
8 voucher, and obviously it has to be -- it has to be an
9 officially issued and validated voucher. But these are
10 not -- it's not like the dealers are sitting there with a
11 list, aha, we've got somebody that we can charge a thousand
12 dollars more to. It doesn't work that way. They get the
13 voucher and it's as good as cash.

14 **THE COURT:** And that's especially going to be the
15 case if the class member maybe doesn't whip out the voucher
16 until the end. But at least under that scenario, that's how
17 it's going to work. It's going to take a thousand dollars
18 right off the purchase price that otherwise would have been
19 the case, right?

20 **MR. CAULEY:** That's how -- yes, that's how it's
21 supposed to work.

22 **THE COURT:** Okay. You know, the midpoint estimate
23 of the value of the extended warranty, 294 million, is what
24 Mr. Padgett thinks, based on expert analysis. Does it sound
25 right to you?

1 **MR. CAULEY:** Well, I can't really comment on the
2 value of the warranty, but what I can comment on is, an
3 extended warranty like this is almost the perfect remedy for
4 a class. The plaintiffs certainly advocate that there's some
5 issue with the CVTs in their vehicles, and they believe that
6 there is -- that there is a problem and an unfairness to
7 their clients.

8 Nissan doesn't see it that way. This was a hotly
9 contested -- this is a contested case. Nissan has a lot of
10 confidence in the CVTs, the transmissions in their vehicles.

11 We've got a disagreement here, but the extended
12 warranty almost puts the proof in the pudding. If our
13 transmission is as good as we think it is, we'll pay less in
14 warranty costs by extending the warranty. If it's not as
15 good as we think it is and it's closer to what the plaintiffs
16 and class counsel are saying, it will cost us more money in
17 the future because the transmission will not have performed
18 as well as we think it's going to perform.

19 But the important thing is, it takes that risk --
20 the good thing about a settlement like this is it takes that
21 risk away from the class, and we shoulder that full burden
22 because we've done an extended warranty.

23 And so in that respect, it's much more
24 advantageous to a class than, say, a settlement fund which
25 has a maximum amount, and in that case, the settlement class

1 is almost taking the risk.

2 Here, we've got all the risk ourselves, and so I
3 think that's why this does provide -- whether you put a
4 number on it or not, it provides great value to the class
5 because they're getting additional protection for their
6 transmissions for another two years or 24,000 miles.

7 **THE COURT:** On that point related to the issue of
8 risk, one of the things that you had said in your response to
9 the objections was, you know, at some point the risk of a
10 problem with the transmission shifts from the manufacturer
11 and the dealer to the -- we can probably say manufacturer
12 here -- but to the purchaser. Fair to say?

13 **MR. CAULEY:** That's true, and that's how we -- you
14 know, I think that's straight contract law, yes.

15 **THE COURT:** Yep. And one of the objectors said,
16 well, my transmission didn't fail until about 107,000 miles.
17 And, in essence, you know, your response would go along the
18 lines of, you know, well, if it didn't fail to 107,000 miles,
19 that would tend to indicate in -- you know, in your case, you
20 didn't have a very good claim with respect to your vehicle
21 anyway if it lasted for 107,000 miles without a problem.
22 Right?

23 **MR. CAULEY:** Certainly, that is not going to be a
24 very strong case.

25 **THE COURT:** Okay. Yeah.

1 **MR. CAULEY:** But, you know, Your Honor, there's
2 always, in any settlement like this, you have -- you're
3 always going to have objectors that want a better deal and
4 want the better deal to be negotiated.

5 But the truth is, this deal, this warranty
6 extension, is very similar to several other warranty
7 extensions that have been approved as fair, reasonable, and
8 adequate. Your Honor has approved previous settlements with
9 similar relief. Judge Campbell has approved one as well.
10 And I know that before that, there was one approved in the
11 Southern District of Florida with the virtually identical
12 consideration. And so each of those courts found it to be
13 fair, reasonable, and adequate.

14 This settlement is not materially different from
15 those. It is very similar, and so we certainly think that
16 also should give the Court confidence that class counsel has
17 negotiated something that's fair, reasonable, and adequate
18 for the class.

19 **THE COURT:** All right. Then, just a couple of
20 questions about your impressions, and I won't ask you too
21 detailed about plaintiffs' counsel. Do you see any evidence
22 of them favoring any one plaintiff over another?
23 Understanding this settlement is not really conducive to that
24 anyway, but . . .

25 **MR. CAULEY:** Everybody pretty much gets the same

1 relief, so the class is being treated fair across the board,
2 and their own objective circumstances will dictate what they
3 actually see in terms of benefit. But there's not one
4 class -- there's not one class being treated one way and
5 another class being treated another.

6 **THE COURT:** And would you say in your experience
7 that class counsel was zealously asserting the interests of
8 the class?

9 **MR. CAULEY:** Certainly from what I could see as
10 defense counsel, they have been adversaries on a number of
11 cases before. They have been adversaries in previous Nissan
12 CVT class action settlements approved by this Court and
13 others. We -- they certainly have not only the institutional
14 knowledge of having pursued those cases involving earlier
15 model vehicles, they certainly insisted on seeing information
16 and data about these vehicles so that they can make an
17 informed decision for the class.

18 **THE COURT:** All right. Thank you very much,
19 Mr. Cauley. Anything else you wish to say?

20 **MR. CAULEY:** Not from me.

21 I don't know if Mr. Padgett misspoke or I
22 misheard. In my case, it's probably I misheard. But I think
23 the number of opt-outs was just 1303 which would be in line
24 with what we have seen in other cases.

25 **THE COURT:** You know, I saw -- did you get 1393?

1 At one point I saw one number and then I think I saw a 1292.

2 **MR. CAULEY:** It was 1248, but when we add the 55
3 that I've talked to you about earlier, we get to 1303. I'd
4 believe that's the number. And that is very much in line,
5 when you compare the size of this class with previous classes
6 involving the same types of settlements, that's very much in
7 line with what we would expect and certainly not lower than
8 what we would expect.

9 **THE COURT:** And I suppose that there was -- yeah,
10 I think there was a, I guess, a late filing actually that did
11 sort of address maybe a final number of opt-outs. I was
12 thinking 1292, but I guess it was 1248.

13 Does that sound right to you, Mr. Padgett?

14 **MR. PADGETT:** That's exactly right.

15 **THE COURT:** Okay. So that's kind of where we are.
16 And if we look at the percentage, you know, it's less than
17 one tenth of 1 percent.

18 **MR. CAULEY:** Less than one tenth of 1 percent and
19 we only have four objections total out of a class notice that
20 went to 1.8 to 1.9 million people, so . . .

21 **THE COURT:** Yeah. And, yeah. 1248, I think
22 that's per the third and, for that matter, the second
23 supplemental declaration of Lana Cooper regarding exclusion
24 request. So that appears to be documented in the record.

25 In terms of objections, I'll talk about those in a

1 moment, and that's certainly a very tiny figure, and the
2 Court's certainly aware of that.

3 All right. Anything further from you, Mr. Cauley?

4 **MR. CAULEY:** Nothing further from us, Your Honor.

5 **THE COURT:** All right. Thank you.

6 All right. You know, the Sixth Circuit is sort of
7 interesting when it comes to class actions because
8 plaintiffs' counsel had focused on what the Sixth Circuit
9 case law says, the Sixth Circuit factors in approving a
10 settlement.

11 And the Sixth Circuit still uses them even though
12 for Rule 23(b)(3) settlements like this, the -- you know, the
13 Rule 23 has been amended in Rule 23(e)(2) to provide factors
14 to be considered in assessing the fairness, adequacy, and
15 reasonableness of a settlement.

16 So the Court notes that Rule 23(e)(2) states as
17 follows: "If the proposal would bind class members, the
18 court may approve it only after a hearing and only on finding
19 that it is fair, reasonable, and adequate after considering
20 whether: (A) the class representatives and class counsel
21 have adequately represented the class; (B) the proposal was
22 negotiated at arm's length; (C) the relief provided for the
23 class is adequate, taking into account the costs, risks, and
24 delay of trial and appeal; the effectiveness of any proposed
25 method of distributing relief to the class, including the

1 method of processing class-member claims; (iii), the terms of
2 any proposed award of attorney's fees, including timing of
3 payment; and (iv) any agreement required to be identified
4 under Rule 23(e)(3).¹⁰ That agreement has been filed of
5 record in this case.

6 And "(D) the proposal treats class members
7 equitably relative to each other."

8 So, you know, the standard is fair, reasonable,
9 and adequate. Considering those factors under the rule, the
10 Sixth Circuit has a list of factors as follows: the value of
11 the benefit rendered to the plaintiff class, the value of the
12 services on an hourly basis -- and I'm sorry, removing --
13 this is the Sixth Circuit factors on an award of attorneys'
14 fees which is our second issue. And we'll return to the
15 Sixth Circuit factors on fairness, reasonableness, and
16 adequateness.

17 But while I'm at the Sixth Circuit factors for an
18 award, the value of the benefit rendered to the plaintiffs'
19 class, the value of the services on an hourly basis, whether
20 the services were undertaken on a contingent fee basis,
21 society's stake in rewarding attorneys who produce such
22 benefits in order to maintain an incentive to others, the
23 complexity of the litigation, and the professional skill and
24 standing of counsel involved on both sides.

25 So that standard for attorneys' fees is, you know,

1 a Sixth Circuit-specific sort of statement of the factors.

2 The Sixth Circuit, however, it does have its own
3 set of factors, a lot of which really mirror Rule 23(a) in
4 terms of the fairness, reasonableness, and adequacy. And,
5 you know, one of the things about the Sixth Circuit factors
6 is that they're more numerous, but they tend to encompass the
7 same thing.

8 So here are the factors in the Sixth Circuit we
9 still look at: the risk of fraud or collusion; the
10 complexity, expense, and likely duration of a litigation; the
11 amount of discovery engaged in by the parties; the likelihood
12 of success on the merits; the opinions of class counsel and
13 class representatives; the reaction of absent class members;
14 and the public interests. The Court also must determine in
15 an A factor whether the settlement gives preferential
16 treatment to the named plaintiffs.

17 All right. Now, I'm going to get to those
18 factors. Let me first address the objections. And the
19 parties really do a good job of noting that really, we have
20 four non-withdrawn objections. Some of them have their own
21 sort of issues as to whether they were validly asserted. For
22 example, even if they were timely, they might not have been
23 filed with the Court the way that they should have been, for
24 example, but the Court is certainly content to treat them all
25 as sort of validly filed.

1 What we have when we look at the objections, and
2 plaintiff, at Docket No. 72, kind of notes that when we look
3 at the four remaining objections, one is primarily about the
4 length of the warranty extension, either calling what was
5 negotiated inadequate or just kind of requesting something
6 more for himself.

7 Then there was a pair of objectors who asserted a
8 problem with the lack of reimbursement negotiated for
9 incidental or consequential damages or just, you know, asking
10 for such things in their own cases. And then there was one
11 that sort of challenged the settlement eligibility
12 requirements. You know, you don't fit within the settlement
13 class unless you meet certain criteria related to your
14 purchase and ownership.

15 And I do think, you know, these appear to be
16 laypersons, and they do seem to be confusing the inquiry here
17 regarding whether settlement is fair, reasonable, and
18 adequate. They're sort of confusing that with the notion of
19 whether it's sort of ideal or whether they're getting
20 everything that they want and things like that. I think
21 there is this confusion.

22 The number one response to all of these sort of
23 objections is, well, you know, be excluded from the class,
24 either opt out, or if there's a problem with the settlement
25 eligibility requirements, it excludes some people that, you

1 know, otherwise might be in the class, you're not going to be
2 in the class anyway.

3 I wanted to -- but if you are in the settlement
4 class, let's look at the last objection. Eric Vinson wanted
5 the settlements mileage cap on reimbursement for repairs that
6 would have been covered had the extended warranty been in
7 place be expanded so that he may be compensated to \$6,000.

8 So here, it's -- you know, that particular
9 objection really is less to who's included in the settlement
10 class, but it is more about, you know, second-guessing the
11 benefits provided under the settlement agreement.

12 So, really, all of these objections for these four
13 objectors, the answer is if you are in the settlement class,
14 you can always opt out. And none of these reflects a problem
15 with the settlement itself, that on a class-wide basis, which
16 is what really is at issue, it's not fair, reasonable, and
17 adequate compensation for the class. And, you know, if you
18 want to be treated better than the class, you can always opt
19 out.

20 And there is, I think, just the reality that these
21 folks are not in a position to have the information as to the
22 adequacy of the settlement. In other words, they don't have
23 the information about what was -- could reasonably have been
24 negotiated given the hurdles faced by class counsel in terms
25 of having a class certified to begin with and prevailing at

1 trial and then getting, you know, relief that could exceed
2 what class counsel was able to negotiate.

3 So for these reasons, I'll overrule the objection.
4 I will note that I can say that no objectors have appeared
5 here in person to speak in favor of the objections, otherwise
6 I'd have afforded them that opportunity.

7 When we look at the factors here, then we'll
8 really, I think, tick through them because I think this can
9 be done pretty quickly because the analysis is not very
10 difficult. Rule 23(e)(2), let's go through the factors. The
11 Court finds that the class representatives and class counsel
12 have adequately represented the class. Nothing defense
13 counsel, for example, has said, even though they're not
14 expected to be cheerleaders for opposing counsel, but nothing
15 defense counsel has said would indicate otherwise.

16 I think the record is replete with information
17 suggesting adequate effort, adequate experience, and adequate
18 results to find adequate representation.

19 There's no question that this is not a collusive
20 settlement and that the settlement was negotiated at arm's
21 length. It involved an experienced attorney who's a
22 well-known mediator who has mediated a lot of these. And I
23 will say from personal knowledge, 30 years ago, he was a
24 pretty esteemed attorney. So with the help of an appropriate
25 mediator, it's clear that we were dealing with a mediated

1 negotiation that resulted in this settlement.

2 The relief provided for the class is, the Court
3 finds, adequate, considering the things I need to consider.

4 There are substantial costs, risks, and delay that
5 would be attendant upon having a trial, prevailing at trial,
6 going through the appellate process if plaintiffs' counsel
7 was to prevail at trial. You know, litigators know exactly
8 what I mean there.

9 The method of distributing relief to the class,
10 including the method of processing class member claims, here,
11 the distribution methods are pretty straightforward. If
12 you're a class member, then you get a voucher. If you have
13 reimbursable expense costs, then you can submit a claim form,
14 and then everyone, whether they submit a claim form or not,
15 who is a member of the class gets the extended warranty. And
16 extended warranties are effective things as a general matter.
17 They're very effective for consumers. The terms of the
18 proposed award of attorneys' fees appear reasonable.

19 In terms of a reasonable percentage, considering
20 the reasonable valuation of the benefits obtained for the
21 class, that percentage is certainly low. It looked to me
22 like the lodestar was a little less than half of the award
23 that we're looking at, which is a little over \$3,450,000.
24 But the Court notes that, you know, the percentage of benefit
25 to the class method is ascendant and with good reason,

1 because I do think if class counsel can get good results with
2 less work, more power to them, rather than sort of churning
3 the file for no good reason to justify a larger award.

4 The Court is familiar with the terms of the
5 settlement agreement and, you know, that -- the substance of
6 that agreement is reflected throughout in the briefing, the
7 parties' substantive terms of proposed settlement, and then
8 the proposed settlement agreement. And the proposal, with
9 the exception of sort of awards to the class representatives
10 does treat class members very equitably relative to each
11 other.

12 The first and the third categories of relief here
13 really are identical.

14 The second category, some people may have
15 reimbursable expenses, some may not. But, you know, any
16 discrepancy between the fact that some plaintiffs may get
17 some recovery that others don't there, there's nothing
18 inequitable about that. So if someone needed a repair to the
19 transmission and it's covered, great, more power to them.
20 And if someone didn't, then that may be just plain old good
21 news for them because they didn't have a transmission
22 problem. So I'm not concerned with inequitable treatment.

23 Now, regarding the Sixth Circuit factors, we'll
24 tick through them quickly. I find no risk of fraud or
25 collusion in the settlement. And there, we're looking at

1 basically the risks that plaintiffs' counsel will negotiate a
2 good fee for themselves in return for a lower benefit to the
3 class. That's the main thing we're looking at. There's no
4 evidence of that, given how this was negotiated and the
5 Court's understanding that attorneys' fees were negotiated
6 after the substantive terms of class relief were agreed to.

7 Looking at the complexity, expense, and likely
8 duration of the litigation, as I said before, that supports
9 settlement as well. There's real benefit to settling a case
10 of such complexity, and this kind of complexity, expense, and
11 duration is the kind of thing that means that it's
12 appropriate to settle cases for lesser benefits than
13 theoretically could have been obtained if counsel was able to
14 hit a home run at trial.

15 Third factor, the amount of discovery engaged in
16 by the parties. The memorandum filed in support of this
17 talks about the efforts of plaintiffs' counsel to investigate
18 these claims and do its homework on the nature of the alleged
19 difficulties with the CVT. I'm not sure there was a whole
20 lot of formal discovery, but there certainly was
21 investigation, and there was certainly informal discovery as
22 well that would support the award.

23 The likelihood of success on the merits, generally
24 that factor means that the less likely the success on the
25 merits, the more adequate a settlement becomes, a particular

1 settlement becomes.

2 Here, the Court realizes that the likelihood of
3 certification of the class, if opposed, and the likelihood of
4 prevailing on the merits, is not insubstantial, but everyone
5 agrees that, you know, the likelihood was debatable, and
6 that's the kind of thing that supports counsel choosing to
7 settle for real substantive relief rather than proceed in
8 hoping to get more.

9 The opinions of class counsel and class
10 representatives, they're all very much in favor of this
11 settlement, and they're the ones with experience in this
12 particular case, and class counsel are very experienced in
13 these matters regarding CVTs generally.

14 The reaction of absent class members with an
15 opt-out rate of less than 1 percent and a much, much lower
16 percentage of objectors, none of which had meritorious
17 objections anyway, suggests that this is certainly a fair,
18 reasonable, and adequate settlement.

19 Finally, the public interest does support
20 settlement because there is, you know, real relief going to a
21 large class of consumers. That's in the public interest.
22 You know, it's an ongoing incentive for Nissan to make its
23 products as good as possible and as up to the snuff in terms
24 of consumer expectations as possible and, of course, to keep
25 our courts not bogged down in enormous class action. The

1 public interest supports settlement of these kinds of cases.

2 Finally, the Court does find that, as discussed
3 before, there really isn't preferential treatment to the
4 named plaintiffs. They treat it like others except to the
5 extent that each of the seven named plaintiffs would get a
6 \$5,000 service award as a representative which, based on the
7 representatives -- you know, the representations of
8 plaintiffs' counsel, that award is not untoward and will be
9 approved.

10 Regarding the motion for attorneys' fees, I think
11 the -- you know, the general notion, as I've indicated, is
12 the lodestar, you know, multiplier approach. There you'd
13 have roughly two to one. Take the lodestar, multiply it by
14 two is kind of approximately what we're looking at here.
15 That's certainly not out of bounds for awards that have been
16 given. And a percentage of the benefit calculation would
17 definitely suggest that this attorneys' fee award is not too
18 high.

19 In terms of the Sixth Circuit factors, I find that
20 the benefit rendered to the plaintiffs' class does look to be
21 very substantial, just one of the three components. The
22 first one has been estimated in an estimation I don't have
23 grounds, really, to dispute even if I'm not required to
24 accept it: 294 million, the value of the services on an
25 hourly basis. You know, here -- you know, there we're really

1 talking about the lodestar. It's very substantial. It's not
2 as high as close to 3.5 million, but it's well over a
3 million, if I look at the most recent estimate.

4 And the Court notes that, according to the filing
5 on March 6th, at least, there was a reference to the lodestar
6 being almost 1.6 million.

7 So then whether the services were undertaken on a
8 contingent fee basis, they were, that supports a higher award
9 because it means the plaintiffs' counsel proceeded at a risk
10 of getting nothing.

11 Society's stake in rewarding attorneys who produce
12 such benefits in order to maintain an incentive to others,
13 there certainly is a stake in bringing these kinds of suits.
14 And I say that even though, you know, I don't know if the
15 allegations of liability for the defendant are adequate or
16 not -- you know, were accurate or not. I don't know if
17 they'd have prevailed. I know Nissan, the defendant,
18 disputes this, but there certainly appears to be no claim
19 from the defendant that -- you know, that these claims, you
20 know, were brought in bad faith, were frivolous, couldn't
21 possibly prevail, nothing like that.

22 And so bringing these sorts of disputes on
23 products that, you know, really matter to consumers, there is
24 an incentive to doing that and doing that on a class-wide
25 basis.

1 Finally, the complexity of the litigation as
2 discussed would be high considering both the size of the
3 class and certain technical issues about the design of the
4 CTV and whether it was flawed and, if so, to what extent and
5 to what effect.

6 And finally, the skill and standing of counsel
7 involved on both sides, we have sort of very experienced and,
8 by all accounts, capable counsel on both sides which would
9 support a higher award.

10 So the Court has little trouble awarding the
11 attorneys' fees requested plus the requested costs in the
12 total amount of 3.5 million.

13 All right. Any questions so far? No? All right.

14 Let's talk about the order because the Court has
15 approved both the settlement and the attorneys' fee award.
16 It's going to grant the motions at Docket No. 48 and 50. But
17 we want to talk about what the final order of approval will
18 look like. And as I indicated, Docket No. 22-2, I think was
19 the one version of this that I've seen.

20 What I would suggest is this, and I want to get
21 counsel's take on this: that it take the version there at
22 Docket No. 22-2, that it work together to both fill in the
23 blanks, update any information, make sure that you have a
24 thorough and complete Exhibit A which apparently will have
25 1303 names on it, and then file a consent motion for the

1 Court to enter this as the final approval order.

2 Any reason not to proceed that way, Mr. Padgett?

3 **MR. PADGETT:** No, Your Honor.

4 **THE COURT:** Does that sound good to you,

5 Mr. Cauley?

6 **MR. HICKS:** It's fine with us, Your Honor.

7 **THE COURT:** All right.

8 **MR. HICKS:** And we'll be glad to -- if the Court
9 wishes, we'll be glad to submit a Word version but --

10 **THE COURT:** Yeah, well, and thank you for that
11 suggestion, Mr. Hicks. A lot of times, we do ask for that
12 because what -- what we'll see in the proposed order is
13 probably just easier for the Court to take a Word version,
14 fill in a couple of things, and get it filed.

15 Here, it may be a little -- the main difference
16 here is, I'm wondering if we shouldn't have a version with
17 the correct Exhibit A that's filed that comes from the
18 parties. You know, there have been a preliminary Exhibit A
19 that I've seen. I'm thinking that if we get a filing that
20 has the full Exhibit A, because there is the issue of what
21 that should look like, and we've talked about it. We've
22 talked about what the 1303 names are and where they came
23 from. Might -- might be good for counsel to submit that, and
24 if it turns out, for some reason, to get this thing entered,
25 it would be helpful to have a Word version, we can certainly

1 reach out for the parties. So that's my inclination.

2 Sometimes there is language that the Court itself
3 has discussed with the parties, and would, you know, include
4 on a Word version. Here, I really think, though, it's
5 probably just filling in some blanks and making sure we have
6 the right Exhibit A.

7 Does that make sense to you, Mr. Padgett,
8 Mr. Hicks? Do it that way?

9 **MR. HICKS:** Yes, Your Honor, that's good by us.

10 **MR. PADGETT:** It does, Your Honor.

11 **THE COURT:** All right. Now, to be clear for the
12 record -- and, you know, there is -- there is this odd
13 dichotomy, because I'm saying I'm granting the motion and I
14 have. Of course, you know, we all know, well, to the extent
15 the final order isn't entered, the motion hasn't been
16 "granted" granted, but I think counsel know what I mean.

17 The Court -- and maybe the way to put it is the
18 Court is indicating its intention to grant the motion, and
19 upon filing of a revised and completed version of the final
20 approval order, will grant the motion formally on the record
21 in writing.

22 All right. Is there anything else that we need to
23 talk about at this time? Mr. Padgett?

24 **MR. PADGETT:** No, Your Honor.

25 **THE COURT:** Thank you.

1 Anything further from you, Mr. Hicks?

2 **MR. HICKS:** No, Your Honor. Thank you.

3 **THE COURT:** All right. Thank you, counsel, and we
4 stand in recess.

5 (WHEREUPON, the foregoing proceedings were
6 concluded at 2:19 p.m.)

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1 REPORTER'S CERTIFICATE

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3 I, Deborah K. Watson, Official Court Reporter for
4 the United States District Court for the Middle District of
5 Tennessee, with offices at Nashville, do hereby certify:

6 That I reported on the Stenograph machine the
7 proceedings held in open court on March 20, 2023, in the
8 matter of UNITED STATES OF AMERICA vs. NISSAN NORTH AMERICA,
9 INC., Case No. 3:22-cv-00354; that said proceedings in
10 connection with the hearing were reduced to typewritten form
11 by me; and that the foregoing transcript (pages 1 through 47)
12 is a true and accurate record of said proceedings.

13 This the 7th day of May, 2023.

14

15 _____
16 /s/ Deborah K. Watson
DEBORAH K. WATSON, RPR, CRR
Official Court Reporter

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